Allahabad High Court
Satendra Kumar Gupta vs State Of U.P. And Anr. on 22 February, 2008
Author: A Roopanwal
Bench: A Roopanwal
JUDGMENT A.K. Roopanwal, J.

1. This criminal revision is directed against the order dated 27.9.06 passed by the Family Court, Gorakhpur in criminal case No. 340/03, Smt. Kanchan Gupta v. Satendra Kumar Gupta, under Section 125, Cr.P.C. whereby the court allowed the application and granted maintenance of Rs. 3,500/- p.m. to O.P. No. 2 and Rs. 3,500/- p.m. for her son from the date of the petition under Section 125, Cr.P.C.

2. It appears from the record that an application under Section 13, Hindu Marriage Act was moved by the revisionist against O.P. No. 2 before the Family Court, Gorakhpur and this was registered as case No. 54/03. The wife Smt. Kanchan Gupta also filed an application under Section 125, Cr.P.C. against the revisionist Satendra Kumar Gupta for her maintenance and for the maintenance of her son and this case was registered as case No. 340/03.

3. The case of the revisionist was that O.P. No. 2 had neglected him and is not taking his care and therefore, their marriage be desolved by a decree of divorce. The Case of O.P. No. 2 was that the husband had neglected her and her son and therefore, the divorce suit filed by the husband was liable to be dismissed and she and her son are entitled to maintenance. Both the parties led oral and documentary evidence in support of their cases. The trial court framed as many as six issues for decision of the case. After perusal of the evidence the trial court dismissed the application for divorce which is not the subject matter of this revision as the only prayer has been made before this Court is about the maintenance under Section 125, Cr.P.C. filed by the wife. The application for maintenance was allowed in the manner stated above which gave rise to this revision.

4. I have heard Mr. Dilip Gupta, learned Counsel for the revisionist, Mr. K.K. Mishra for O.P. No. 2 and perused the record.

5. Mr. Gupta argued that the trial court has wrongly assessed the income of the revisionist and has also wrongly fixed the quantum of maintenance, therefore, findings in this regard are liable to be quashed. In this regard he argued that the trial court based his findings on the basis of that record which was subsequently found to be not reliable by the court itself and therefore, the above findings should be quashed and matter be remanded back to the court for afresh decision. The above argument was refuted by the other side.

6. A look at the impugned judgment would reveal that the findings regarding the income and the quantum of maintenance have been recorded by the trial court on the basis of the record of the income tax assessments for certain years relied upon by the wife. The husband challenged the truthfulness of these records by moving an application under Section 340, Cr.P.C. even during the continuance of the proceedings but the trial court decided the application under Section 125, Cr.P.C. without deciding the application under Section 340, Cr.P.C. However, after the decision of the

application under Section 125, Cr.P.C. on 27.9.06 the same court decided the application under Section 340, Cr.P.C. vide order dated 26.2.07. In the last paragraph of this order it was observed by the court that the judgment in case No. 340/03 has been obtained by the wife on the basis of forged evidence. The application under Section 340, Cr.P.C. was allowed by the court and criminal proceedings were instituted against the wife and others. Learned Counsel for the revisionist says that in view of the decision on the application under Section 340, Cr.P.C. judgment passed in the proceedings under Section 125, Cr.P.C. cannot be allowed to stand and therefore, this should be set aside.

7. Learned Counsel for O.P. No. 2 argued that the procedure adopted by the trial court for the decision of the application under Section 340, Cr.P.C. is not a correct procedure and therefore, the argument advanced by the learned Counsel for the revisionist should not be accepted.

8. In my opinion, it cannot be a valid consideration for deciding the controversy between the parties as to whether the procedure in initiating the proceedings under Section 340, Cr.P.C. adopted by the trial court was correct or wrong. The only consideration for testing the propriety of the judgment under Section 125, Cr.P.C. is as to whether the decision on the application under Section 340, Cr.P.C. can be a valid consideration or not for deciding the application under Section 125, Cr.P.C. and in that regard it can safely be said that once findings recorded on the application under Section 340, Cr.P.C. have not been set aside by any competent court of law, hence, these findings are binding upon the parties and in view of these findings this can very well be said that the evidence on the basis of which the wife got judgment in the proceedings under Section 125, Cr.P.C. cannot be said to be a good judgment as this judgment is based on that evidence which has been held to be forged by that very court which had decided the proceedings under Section 125, Cr.P.C.

9. In view of the above, I am in agreement with the argument advanced by the learned Counsel for the revisionist that the judgment and order passed in the proceedings under Section 125, Cr.P.C. registered as case No. 340/03 are liable to be quashed and the matter is liable to be remanded back for afresh decision.

10. Accordingly, revision is allowed. Judgment and order dated 27.9.06 is set aside so far as it relates to the proceedings under Section 125, Cr.P.C. registered at case No. 340/03. The matter is remanded back to the trial court for afresh decision on the basis of the evidence on record. The parties may be allowed to lead fresh evidence, if they so like.